उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(27)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.210 of 2005

APPELLANT (In Jail)	:	Vijay Kumar Jangam, S/o Venkatrao Jangam, aged about 25 years, Occupation – Motor Cycle Mechanic R/o. Mahadeo Ghatpara, Jagdalpur, Distt. Bastar (CG)
	Versus	
RESPONDENT	:	State of Chhattisgarh Through : Police Station Kotwali, Jagdalpur, Distt. Bastar (CG)

Present:

Mr. Subhash Yadav, counsel for the appellant.

Mr. Neeraj Mehta, Panel Lawyer for the State/respondent.

ORAL JUDGMENT

(13th December 2007)

Dhirendra Mishra, J

This criminal appeal is directed against the judgment of conviction and order of sentence dated 4th February 2005 passed in S.T.No.37/04 whereby learned First Additional Sessions Judge, Bastar, Jagdalpur has convicted the appellant under Section 376(2)(g) of the IPC and sentenced him to undergo RI for ten years, pay a fine of Rs.500/-and in default of payment of fine to undergo additional RI for two months.

2. Case of the prosecution, in brief, is that the prosecutrix lodged a report on 6.12.2003 at about 18.15 hours alleging therein

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

that 5-6 months prior to lodging of report on Sunday at about 8.00 p.m. appellant Vijay, Babla and Roshan caught her near circuit house while she was going to the house of Soni advocate. They took her in their Hero Puck under culvert and all of them committed forcible rape turn by turn and left her near the circuit house. Thereafter, she went to the house of Soni advocate for sleeping. When she became pregnant she narrated about the incident to her brother Rajesh, about four months after the incident. She got herself aborted by Dr. Bansal. Accused Roshan kept her in his home for few days on the allurement of marriage. However, now he is refusing to marry her and on insisting he threatens her brother and herself.

3. After registration of the offence the prosecutrix was sent for medical examination to Maharani Hospital, Jagdalpur where Dr. Hina Ahmad (PW-6) examined her and gave her report of Ex.P/4. She was also sent for radiological examination for assessing her age and report of the radiologist is Ex.P/9 wherein her age has been assessed between 14-17 years. The treatment papers of Bansal Nursing Home of Ex.P/8 and declaration of consent of Ex.P/7 were taken into possession vide seizure memo of Ex.P/5. After completing investigation charge sheet was filed against the appellant in the Court of Chief Judicial Magistrate, Jagdalpur whereas charge sheet against the other accused persons was filed before the Juvenile Justice Board.

XI-HC—

(29)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

4. During trial the prosecution examined 11 witnesses in all. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication because of political rivalry. The appellant has also examined Smt. Tousif Zahan as defence witness no. 1. However, learned trial Court after hearing counsel for the respective parties convicted and sentenced the appellant as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the appellant submits that as per allegations present in the First Information Report, the incident took place some 5-6 months before lodging of the report. Dr. Bansal, who caused abortion of the prosecutrix on 21.11.2003 has stated that she was carrying pregnancy of 14 weeks whereas report was lodged on 6.12.2003, as such it is clear that the prosecutrix had relationship with the person who was responsible for her pregnancy even subsequent to the date of incident. He further argues that the explanation offered by the prosecution for the inordinate delay in lodging the report, on the face of it, is false as in the FIR the prosecutrix has claimed that after the incident she went to the house of Soni advocate and thereafter returned to her home and disclosed about the incident only after four months to her brother when her pregnancy was discovered whereas in the Court she has stated that on the next day of the incident she went

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

to lodge the report in police station but her report was not recorded. In paragraph 28 she has stated that though she did not complain against the police officers for not recording her report, however, she apprised Sunita Singh Madam about the same whereas Sunita Singh (PW-2) in paragraph 4 has deposed that after learning about the incident from the prosecutrix when she asked the prosecutrix as to why she did not lodge report earlier, she replied that the Town Inspector had threatened her that she would be arrested for doing the dirty job and after calling all the three boys to police station he had asked her to marry one of them otherwise he would arrest all the three, which was accepted by the boys and therefore, she returned to her home. He further submits that even when the prosecutrix went for abortion she was accompanied by accused Roshan, her brother Rajesh and mother of accused Roshan namely Rukmani and the prosecutrix gave consent for abortion and did not make any allegation against the present appellant and the allegations were made for the first time on 6.12.2003 when the report was lodged. The conduct of the prosecutrix is highly improbable and no implicit reliance can be placed on the solitary testimony of the prosecutrix for convicting the appellant.

6. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

XI-HC—78

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक \(पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

7. I have heard learned counsel for both the parties and have perused the evidence available on record including impugned judgment of the trial Court.

8. Conviction of the appellant is based on the testimony of the prosecutrix and PW-2 Smt. Sunita Singh.

9. It is not in dispute that the report was lodged after 5-6 months of the incident and the explanation for delay in lodging the FIR as it reflects from perusal of the report itself, is that it was because of the promise of marriage by the juvenile offender Roshan. However, in her deposition before the Court the prosecutrix has stated that she had gone to lodge the report on the very next day of the incident in the morning to Police Station Kotwali but her report was not recorded. In paragraph 28 she had admitted that she did not make any complaint against the police officials to the higher authorities for not recording her report. She has further stated that she informed Sunita Singh Madam about the same. On the other hand, Smt. Sunita Singh (PW-2) has stated that the prosecutrix came to her in the month of December along with her brother Seemanchal Soni and informed her about the incident, which occurred 5-6 months before and she further stated that when she asked the prosecutrix as to why she did not lodge report earlier, the prosecutrix replied that the Town Inspector gave her threat of arrest saying that she is involved in dirty job and

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

thereafter, called all the three boys and asked her to marry one of them, failing which he would arrest all the three, which was accepted by the boys.

10. Apart from the inordinate delay in lodging the FIR and unconvincing explanation for the said delay, from statement of the prosecutrix as also PW-2 Sunita Singh, PW-7 Dr. Sukriti Bansal it is evident that after her pregnancy was detected, mother of accused Roshan and Babla promised her that they shall get her married with accused Roshan and she started living in their house and both of them took her to Dr. Bansal's Nursing Home for abortion. From the documents of Ex.P/7 & P/8 being declaration of consent and indoor case sheet of Bansal Nursing Home, it is clear that the prosecutrix has given a declaration of consent for abortion showing herself to be the wife of Roshan and both these documents bear the signatures of the prosecutrix, her brother Rajesh, accused Roshan and even Rukmani, mother of accused Roshan, who has singed the above documents as guardian of the prosecutrix. There is no reference of the present appellant in the above documents. Thus, except in the deposition of the prosecutrix before the Court and in the FIR that she was subjected to rape some 5-6 months back by all the three accused persons, there is no any other evidence which connects the present appellant with the crime in question. The appellant has taken a specific defence by way of cross-examining the prosecutrix that mother of the

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7.	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

appellant is a congress worker and she is opposed to Sunita Singh Madam (PW-2), therefore, he has been roped in the above offence. The prosecutrix has also admitted that she resides in the house of Sunita Singh, who accompanied her while she had gone to depose and is helping her in the case. The appellant has also examined Smt. Tousif Zahan in his defence to establish that there is some political rivalry between PW-2 Sunita Singh and his mother, who happens to be office bearer of a political party and because of this animosity name of the appellant has been dragged in the said offence.

11. Taking into consideration the fact that report was lodged after 5-6 months of the incident, the explanation offered by the prosecution for the same is contradictory and unconvincing, that there is no evidence to show that the present appellant was in any manner involved in abortion of the prosecutrix after four months, that the prosecutrix did not disclose even at the time of abortion to the doctor regarding any involvement of the appellant in crime in question, that there is evidence of political rivalry between mother of the appellant and Smt. Sunita Singh who was actively assisting the prosecutrix in pursuing the matter right from the stage of lodging the FIR till her statement was recorded before the trial Court, this Court is of the considered opinion that it would not be safe to act upon the solitary testimony of the prosecutrix for convicting the appellant in a serious offence like gang rape.

XI-HC—78

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	12. In the result, the appeal succeeds. Conviction of the appellant under Section 376(2)(g) of the IPC and sentence passed thereon, are set aside. He is acquitted of the above charge. He be set at liberty forthwith if not required in any other case. **Sd/-** **Dhirendra Mishra** **Judge**	